Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

No. 79-5584

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

SANTOS SEPULVEDA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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MEMORANDUM FOR THE UNITED STATES

Petitioner contends (Pet. 2, 5-9) that the district court erred by imposing a special parole term as part of his sentence for conspiracy to violate federal narcotics laws.

Following a plea of guilty, petitioner was convicted in the United States District Court for the Eastern District of New York on one count of conspiring to distribute heroin and to possess heroin with intent to distribute it, in violation of 21 U.S.C. 846. He was sentenced to five years' imprisonment to be followed by a five year term of special parole.

Petitioner subsequently filed a motion under 28 U.S.C. 2255 claiming that imposition of the special parole term was not authorized for the conspiracy offense. The district court denied the motion as well as a subsequent motion for reconsideration (Pet. Apps. D, E). The court of appeals affirmed (Pet. App. A).

The question presented in this case is identical to that presented in Bifulco v. United States, No. 79-5010, petition for certiorari granted October 9, 1979.[1] In that case, the court of appeals held that it is proper to impose a special parole term for a drug conspiracy in violation of Section 846 whenever such a term is required for the underlying substantive offense. Bifulco v. United States, 600 F.2d 407, 409-410 (2d Cir. 1979). With one exception,[2] every court of appeals to have considered this question has reached the same conclusion. See United States v. Sellers, 603 F.2d 53 (8th Cir. 1979), petition for certiorari pending, No. 79-5485, Cantu v. United States, 598 F.2d 471, 472 (5th Cir. 1979); United States v. Burman, 584 F.2d 1354, 1357-1358 (4th Cir. 1978), cert. denied, 439 U.S. 1111 (1979); United States v. Jacobson, 578 F.2d 863, 867-868 (10th Cir.), cert. denied, 439 U.S. 932 (1978). We believe that these decisions are correct and that imposition of a special parole term as part of petitioner's sentence was proper. Nonetheless, because this question is presently before the Court, we agree with petitioner (Pet. 5-6) that the Court should defer consideration of this petition until Bifulco is decided and dispose of this case in light of its holding in Bifulco.

Respectfully submitted.

WADE H. McCREE, JR.
Solicitor General

DECEMBER 1979

1/ We are sending petitioner's counsel copies of the government's response to the petition in Bifulco.

2/ United States v. Mearns, 599 F.2d 1296 (3d Cir. 1979), petition for certiorari pending, No. 79-415.